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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	(Jointly Administered)
	:	
Debtors.	:	Re: Docket No. 1731
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CURE OBJECTION BY LINKEDIN

LinkedIn Corporation (“LinkedIn”), by and through its undersigned counsel, objects to the cure amount proposed in the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (Docket No. 1731) (“Notice”) as follows:

1. In the Notice, Debtors propose to assume and assign executory contracts between Sears Holdings Management Corporation and LinkedIn in connection with its potential Sale Transaction.

2. The Notice identifies the following as the LinkedIn contracts proposed to be assumed by the Successful Bidder as part of the Sale Transaction:

No	Debtor Counterparty(s)	Counterparty Name	Contract Title	Contract Executed Date	Contract Expiration Date	Contract Number	Cure Amount
4426	Sears Holdings Management Corporation	LinkedIn	THCS-LinkedIn Corporation-LinkedIn Corporation Subscription Agreement-2008	4/1/2008	2/28/2019	SHCLCW3535	\$124,466.00
4427	Sears Holdings Management Corporation	LinkedIn	LinkedIn 2018 Order Form to Corporate Subscription Agreement	3/1/2018	2/28/2019	CW2335071	\$0.00

(Docket No. 1731, at page 192 of 342)

3. LinkedIn and Sears Holdings Management Corporation are parties to a LinkedIn Subscription Agreement and Contracts CS2221167-16 (*See Exhibit A*) and CS4446328-18 (*See Exhibit B*) (collectively, the “Licenses”).
4. The Licenses are the contractual vehicles through which Debtor obtained licenses/subscriptions for LinkedIn’s online services. The Licenses are executory contracts for the non-exclusive license of intellectual property and payment of royalties of the type described by Section 365(n), and payments due under the Licenses constitute royalties. *In re Prize Frize*, 32 F.3d 426 (9th Cir. 1994).
5. Any licenses that Debtors have to LinkedIn online services are licenses of copyrighted materials and, therefore, may not be assumed or assigned without LinkedIn’s consent. *See In re Catapult Entertainment*, 165 F.3d 747 (9th Cir. 1999) (since federal patent law excused non-debtor licensor from rendering performance, debtor could not assume or assign the non-exclusive patent license without the non-debtor’s licensor’s consent). The analysis of the court in *In re Catapult* holds true for non-exclusive copyright licenses. *See In re Access Beyond Technologies, Inc.*, 237 B.R. 32, 48, 49 (Bankr. D. Del. 1999) (citing *In re West Elec., Inc.*, 852 F.2d 79 (3d Cir. 1988)); *In re Patient Educ. Media*, 210

B.R. 237, 243 (Bankr. S.D.N.Y. 1997) (holding that debtor could not assume and assign nonexclusive license without copyright owner's consent). LinkedIn objects to the extent that Debtor may propose assuming or assigning the licenses without LinkedIn's consent.

6. The cure amount for the Licenses is **\$278,099.17**, as set forth in the following invoices:

Exhibit	Invoice No.	Contract No.	Invoice Date	Due Date	Amount
C	10110443124	CS4446328-18	4/23/2018	6/22/2018	\$12,246.26
D	10110549568	CS2221167-16	9/2/2018	11/1/2018	\$124,466.25
E	10110549625	CS4446328-18	9/2/2018	11/1/2018	\$8,460.21
F	10110619425	CS2221167-16	12/3/2018	2/1/2019	\$124,466.25
G	10110619488	CS4446328-18	12/3/2018	2/1/2019	\$8,460.20
				TOTAL:	\$278,099.17

7. LinkedIn reserves the right to withdraw this cure objection or revise the stated cure amount pending further investigation. Depending on the timing of actual assumption and cure, the amount owed may increase for unpaid post-petition use of LinkedIn's products.

WHEREFORE, LinkedIn objects and states that the Cure Amount for the Licenses is **\$278,099.17**.

DATED January 25, 2019.

/s/ Paul J. Labov

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